

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE	:	BANKRUPTCY NO. 01-10593
	:	CHAPTER 7
JOHN E. KELTZ AND PATRICIA D.	:	
KELTZ, DEBTORS	:	
	:	
JOHN W. KELTZ AND PATRICIA D.	:	MOTION NO. JWM-1
KELTZ, Movants	:	
vs.	:	
HOMEQ, Respondent	:	

APPEARANCES:

JAMES W. MALYS, ESQ., OIL CITY, PA, ATTORNEY FOR DEBTORS  
UNITED STATES TRUSTEE, PITTSBURGH, PA

WARREN W. BENTZ, U.S. BANKRUPTCY JUDGE

DATED: MAY 9, 2001

OPINION

John E. Keltz and Patricia D. Keltz ("Debtors") filed a voluntary Petition under Chapter 7 of the Bankruptcy Code on March 26, 2001.

Debtors own a residence with an asserted value of \$17,000. Debtors assert that HomEq holds a first mortgage with a payoff of \$52,265.54 and a second mortgage with a payoff of \$36,337.14. Presently before the Court is Debtors' Motion to Determine Secured Status. Debtors' request a determination that the value of Debtors' residence is \$17,000 and an Order which limits the secured claim of HomEq to \$17,000, in effect a stripping down of the first mortgage to the value of the residence and a stripoff or elimination of the second mortgage. The relief requested is not warranted under existing bankruptcy law and the Motion must be refused.

The United States Supreme Court has rejected lien stripping in Chapter 7. Dewsnup v. Timm, 502 U.S. 410, 112 S.Ct. 773 (1992). See also In re McDonald, 205 F.3d 606 (3d Cir.

2000). Thus, Debtors cannot strip down the first mortgage to the value of the residence.

While expressing no view on the issue, the Court of Appeals for the Third Circuit also notes "that courts are split on whether Dewsnup's rejection of lien stripping in Chapter 7 applies to a wholly unsecured lien." In re McDonald, 205 F.3d at 614-15. We will follow those cases which find that Dewsnup is applicable and that completely underwater liens cannot be stripped off. In re Fitzmaurice, 248 B.R. 356 (Bankr. W.D. Mo. 2000); Cunningham v. Homecomings Fin. Network (In re Cunningham), 246 B.R. 241 (Bankr. D. Md. 2000); Cater v. American Gen. Fin. (In re Cater), 240 B.R. 420 (M.D. Ala. 1999); In re Virello, 236 B.R. 199 (Bankr. D. S.C. 1999); Swiatek v. Pagliaro (In re Swiatek), 231 B.R. 26 (Bankr. D. Del. 1999); Laskin v. First Nat'l Bank of Keystone (In re Laskin), 222 B.R. 872 (9<sup>th</sup> Cir. BAP 1998); Crossroads of Hillsville v. Payne, 179 B.R. 486 (W.D. Va. 1995); In re Mershman, 158 B.R. 698 (Bankr. N.D. Ohio 1993). Contra see Farha v. First Am. Title Ins. (In re Farha), 246 B.R. 547 (Bankr. E.D. Mich. 2000); Warthen v. Smith (In re Smith), 247 B.R. 191 (W.D. Va. 2000) aff'd, 243 F3d 540 (4<sup>th</sup> Cir. 2001), cert. filed (April 10, 2001) (No. 00-1574); Zempel v. Household Fin. Corp. v. PNC Bank (In re Zempel), 244 B.R. 625 (Bankr. W.D. Ky. 1999); Yi v. Citibank (Md.), N.A. (In re Yi), 219 B.R. 394 (E.D. Va. 1998); Howard v. National Westminster Bank, U.S.A. (In re Howard), 184 B.R. 644 (Bankr. E.D. N.Y. 1995).

An appropriate Order will be entered.

\_\_\_\_\_/s/\_\_\_\_\_  
Warren W. Bentz  
United States Bankruptcy Judge

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vs.	:	
HOMEQ, Respondent	:	

ORDER

This 9 day of May, 2001, in accordance with the accompanying Opinion, it shall be, and hereby is, ORDERED that the within Motion is DISMISSED.

\_\_\_\_\_/s/\_\_\_\_\_  
Warren W. Bentz  
United States Bankruptcy Judge

c: James W. Malys, Esq.  
HomEq  
Richard W. Roeder, Esq.  
U.S. Trustee